

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

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In the matter of the petition of

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ROYAL JORDANIAN AIRLINES

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Regulatory Docket No. FAA-2003-14681

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for an exemption from § 129.28(c)

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of Title 14, Code of Federal Regulations *

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DENIAL OF EXEMPTION

By electronic submission received March 11, 2003, and supplemental information received April 1, 2003, Mr. Jalal D. Haidar, Office of the President, Royal Jordanian Airlines (RJA), 6 East 43rd Street, New York, NY 10017, petitioned the Federal Aviation Administration (FAA) on behalf of Royal Jordanian for an exemption from Title 14, Code of Federal Regulations (14 CFR) § 129.28. The proposed exemption would permit RJA to operate its Airbus 340 and 310 airplanes after April 9, 2003.

The petitioner requests relief from the following section:

Section 129.28(c) states, in pertinent part, that after April 9, 2003, no foreign air carrier covered by § 129.1(a) may operate a passenger carrying transport category airplane, within the United States, unless the airplane's flight deck door installation meets the requirements of paragraphs (c)(1) and (2) of this section or an alternative standard found acceptable to the Administrator.

The petitioner supports its request with the following information:

The petitioner states that RJA is the National Carrier of the Hashemite Kingdom of Jordan, a wholly owned corporation of the State. The petitioner submits that RJA has served the U.S. for more than 25 years and now serves New York and Chicago using a small fleet of Airbus 340 and 310 aircraft. The petitioner states that RJA is committed to comply with the final rulemaking and has already purchased the required kits, some of which have

been delivered, to carry out the necessary modifications. The petitioner states that at the present time, RJA is the only carrier operating direct flights between Jordan and the United States. The petitioner indicates that the direct flights are serving the interest of the citizens of the United States and Jordan.

The petitioner explains that RJA does not perform some engineering modifications on some aircraft in its fleet. As a result, the petitioner states that RJA is required to make arrangements with engineering firms outside of Jordan to carry out and complete the engineering work. The petitioner states that because of the engineering and operational restrictions and limitations of having the engineering work done outside of Jordan, RJA is requesting an extension for compliance no later than mid-February, 2004.

The petitioner submits that RJA is known for its unique aviation security measures including the utilization of armed air marshals since 1971 on every single flight as standard operating procedure, without exception. The petitioner indicates that the direct flights are serving the interest of the citizens of the United States and Jordan. The petitioner states that RJA uses armed air marshals on all flights that are trained law enforcement personnel and are empowered to use lethal force against intruders or hijackers. The petitioner believes this extension is necessary to avoid disrupting RJA air service into the United States.

The FAA has determined that good cause exists for waiving the requirements for Federal Register publication because any delay in acting on this petition would be detrimental to RJA.

The FAA's analysis/summary is as follows:

The FAA has fully considered all of the petitioner's supporting information, and finds that a grant of exemption is not in the public interest and could adversely affect safety. Section 129.28(c) and (d) require improved flight deck security and operational and procedural changes to prevent unauthorized access to the flight deck on passenger-carrying aircraft and some cargo aircraft operated by foreign carriers under the provisions of part 129.

On September 11, 2001, the United States experienced terrorist attacks when aircraft were commandeered and used as weapons. These actions demonstrated that there is a need to improve the design and operational and procedural security of the flight deck. On November 19, 2001, Congress enacted Public Law 107-71, the Aviation and Transportation Security Act (the Act), which specifies that improved flight deck security must be applied to aircraft operating in air transportation.

Section 104 of the Act directed the FAA to issue a final rule, without seeking public comment prior to adoption, addressing the security requirement for aircraft that are currently required to have flight deck doors.

In response to section 104(a)(1) of the Act, the FAA issued Amendment 121–288 to 14 CFR Part 121, which requires that certain U.S. air carriers install reinforced flight deck doors that provide intrusion and ballistic penetration resistance (67 FR 2881, January 15, 2002).

As discussed in the preamble to Amendment 121–288, the FAA expects that foreign air carriers conducting service to and from the United States under Part 129 would have flight deck security measures commensurate with those of U.S. carriers. With Part 121 flight deck security improved, the FAA was concerned that Part 129 operations will be more attractive targets for terrorist actions if security is not similarly improved. Amendment 121-288 solicited comments on this issue and clearly states that the FAA intended to have consistent flight deck door security requirements for Parts 121 and 129. The FAA received no comments objecting to the stated intention to adopt consistent standards.

On June 21, 2002, the FAA issued Amendment 129-33 which requires that foreign air carriers operating under Part 129 install reinforced doors that provide intrusion and ballistic penetration resistance (67FR 42450, June 21, 2002). Part 129 was amended with the objective of ensuring that foreign operators have consistent flight deck security with those operating under Part 121.

On December 30, 2002, Amendment 129-36 was issued to clarify the FAA's intent with respect to applicability of the reinforced door requirements to certain types of aircraft and foreign air carrier operations. Amendment 129-36 was issued after reviewing several issues raised at a public hearing held on July 30, 2002, and comments were received as a result of the June 21, 2002, final rule. Amendment 129-36 applies to transport category airplanes originally type certificated with 20 or more passenger seats and certain transport category cargo airplanes that have a door installed between the pilot compartment and any other occupied compartment on or after June 21, 2002 operated within the U.S. except for overflights. Additionally, it requires that operators adopt operational changes restricting access to the flight deck in flight.

The FAA has discussed its intent to have consistent flight deck door security requirements for parts 121 and 129 at numerous international settings. The FAA finds that it is unacceptable to create two levels of flight deck protection for the same operations to and from U.S. airports. It would be irresponsible to expose passengers, and those on the ground, to greater risks based solely upon the country of registration of the aircraft. To meet this goal of corresponding protection, it is essential that the standards be imposed at the same time. If the requirements do not have a synchronized compliance time, the security risk will be shifted to the unprotected aircraft. Unsynchronized implementation of the security measures should not create a more attractive target for terrorists.

The FAA finds that April 9, 2003, is a firm date. Foreign air carriers were aware of the requirement for U.S. carriers for 18 months and for Part 129 operations since June 21, 2002. Security considerations overshadow the burden on individual operators who have reasons to request an exemption.

In evaluating this petition for an exemption, the FAA has fully considered the logistical difficulties hindering the petitioner from bringing its airplanes into compliance with the affected section. The FAA and the Transportation Security Administration (TSA) have also considered the petitioner's additional security procedures. The FAA finds, however, that these logistical difficulties and security measures are not the basis upon which to grant an exemption. Safety and security requires that these improvements must be installed in each airplane.

Thus, after fully considering all of the petitioner's supporting information, and the reasons that necessitate the requirements set forth in the affected section, the FAA finds that the petitioner has failed to show how its proposed exemption would be in the public interest.

The FAA also finds that the petitioner has failed to show how its proposed exemption would provide a level of safety equal to that provided by the rule from which the exemption is sought. An airplane operated in non-compliance with §129.28(c) the affected sections, is not as safe as an airplane that is operated in compliance with the §129.28(c).

In consideration of the foregoing, and with the concurrence of TSA, I find that a grant of exemption would not be in the public interest. Therefore, in accordance with the authority contained in 49 U.S.C. §§ 40113 and 44701 delegated to me by the Administrator, the petition from Royal Jordanian Airlines for an exemption from § 129.28(c) is hereby denied.

Please note that in an effort to allow the public to participate in tracking the FAA's rulemaking activities, we have transitioned to the Department of Transportation's online Docket Management System (DMS) at <http://dms.dot.gov>. This new docket system enables interested persons to submit requests to, view requests on, and download requests from the DMS to comply with 14 CFR § 11.63. Please submit future requests through the DMS.

Issued in Washington, DC, on April 7, 2003.

/s/

Louis C. Cusimano
Acting Director, Flight Standards Service